SUPPORTING BRIEF.

Basis of Court's Jurisdiction.

Jurisdiction in this Court arises under Section 240(a) of the Judicial Code, this being a petition for a writ of certiorari to the Circuit Court of Appeals for the Second Circuit to review a final judgment or determination of that Court which is subject to review by certiorari.

The Statutory Provisions Involved.

This petition involves an order of the Secretary of Agriculture of the United States known as Order No. 27, issued under the Agricultural Marketing Agreement Act of 1937. The pertinent provisions of that Statute were set out in this Court's opinion in *United States* v. *Rock Royal Co-Operative, Inc.*, 307 U. S. 533. The Order in question was also before this Court in that case and its terms summarized in the Court's opinion. An official copy of the order is part of the record submitted herewith (transcript of record, p. 11). A brief statement of the method adopted under the terms of the Order to create a uniform price to producers is found in Paragraph "7" of the foregoing petition.

The Questions Presented.

Two questions of vital importance to the milk industry are presented by this petition:

I.

(a) May the Secretary of Agriculture, acting under the Agricultural Marketing Agreement Act of 1937, properly issue an order regulating the marketing of milk produced within a given state and handled throughout its existence within the confines of that state, without the use of facilities of interstate commerce, and without commingling or physical contact with "interstate" milk, where

the sole ground for invoking federal jurisdiction is that such milk is sold in competition with such "interstate" milk?

(b) Subordinate to the foregoing question is one of construction: viz., whether Order No. 27, read in the light of the provisions touching upon the concurrent State Order and the manifest purpose to permit the State to retain control of "intrastate" milk, should not have been construed to effectuate that intention rather than to embrace within Federal control all milk produced for sale in the marketing area.

II.

When minimum prices required to be paid to producers as fixed by the Order exceed the market price at which such milk can be resold, does not such Order violate the due process clause of the Fifth Amendment of the United States Constitution?

Argument.

Both of the questions so raised were presented to the Circuit Court of Appeals. In the opinion of that Court, favorable consideration thereof was precluded by rulings of this Court.

The question of the scope of Federal power under the Commerce Clause was held to be determined by this Court in *United States* v. *Rock Royal Co-Operative, Inc.*, 307 U. S. 533.

The question of due process, so raised, was held to be determined by this Court in *Hegeman Farms Corp.* v. *Baldwin*, 293 U. S. 163.

The petitioner, for the reasons herein outlined, urges that neither of the cases referred to can be said to be controlling and that neither of these questions has been decided by this Court in any case in which such question was presented for determination under comparable facts.

POINT I.

The Federal power under the commerce clause.

(A) The Extent of Federal Power Over Purely Intrastate Transactions.

In the *Rock Royal* case certain expressions in the majority opinion of this Court written by Mr. Justice Reed have been quoted by the Government as conclusively determining that the provisions of Order No. 27 may be equally applicable to so-called "intrastate" as well as to "interstate" milk. The thought underlying such argument is that the competitive situation makes it necessary to control the intrastate product in order to protect the interstate product.

Our contention is that the problem was not presented to this Court in the *Rock Royal* case. Mr. Justice Reed, in that case, at the inception of the opinion, referring to the Federal and State Orders, said (p. 540):

> "The two orders are in pari materia, one covering milk moving in or directly burdening, obstructing or affecting interstate commerce and the other covering milk in intrastate commerce. *Each defendant is a dealer handling milk moving in interstate commerce.*" (Italics ours.)

Further (p. 541):

> *"The state order was eliminated from consideration on the understanding, not questioned here, that the milk of all four defendants is covered by the Federal Order, if valid."* (Italics ours.)

Referring to the scope of Order No. 27, the opinion states (p. 553):

> *"An exception was made as to milk regulated by the order of the Commissioner of Agriculture and Markets of the State of New York."* (Italics ours.)

Further, when the Court commenced the discussion of the question of the constitutionality of the Act, the following statement was made (p. 568):

> *"There is no challenge to the fact that the milk of all four defendants reaches the marketing area through the channels of interstate commerce."* (Italics ours.)

The petitioner urges that the foregoing excerpts from Mr. Justice Reed's opinion demonstrate that, insofar as the general language of the majority opinion embraced the discussion of wholly intrastate milk, the decision was not directly pertinent to the facts presented in the record. The Court was dealing with the intrastate operations of handlers of *interstate* milk.

The present record squarely presents the question whether the Order may be enforced against a handler whose activities are as far removed from any interstate aspects as it is possible for any handling of milk to be. Petitioner's milk flows in its own individual channel, wholly within state lines, free from any physical contact with any other milk, whether interstate or intrastate. Petitioner has its own source of supply within the State. It is transported within the State and sold and consumed therein. Except for the single fact that petitioner's milk is sold in the same market as interstate milk, no possible relationship can be said to exist between petitioner's milk and the milk of those handlers whose product "reaches the marketing area through the channels of interstate commerce".

Concededly, in the course of the discussion, Mr. Justice Reed made statements which, read out of their context, would appear to justify the conclusion of the Circuit Court of Appeals. Those statements cannot be disregarded. Petitioner must accordingly meet the Government's arguments based thereon. Mr. Justice Reed, at the inception of Subdivision "II" of his opinion, and immediately after the

sentence above quoted to the effect that the milk of all the defendants reached the market through the channels of interstate commerce, said (p. 568):

> "Nor is any question raised as to the power of the Congress to regulate the distribution in the area of the wholly intrastate milk. It is recognized that the Federal authority covers the sales of this milk, as its marketing is inextricably intermingled with and directly affects the marketing in the area of the milk which moves across state lines."

The opinion then proceeds to point out the basis of the defendants' challenge to the constitutionality of the Act. Their point was that while, admittedly, their product was "interstate" milk, the incidence of the regulation was on a purely local transaction, viz.: "the price to be paid upon the sale by a dairy farmer who delivers his milk to some country plant".

Mr. Justice Reed then proceeded to point out that under a number of decisions of this Court, such local activities may, nevertheless, come within the sphere of Federal control.

We argue:

1. No question was presented with respect to the Federal power over milk, the marketing of which was wholly intrastate. The point raised and passed upon was limited to the power to regulate local activities in the marketing of "interstate" milk.

2. The cases cited by Mr. Justice Reed, in each instance, touch upon the Federal power, under the Commerce Clause, to regulate activities which may, in a narrow sense, be intrastate but which were applied to goods which, in the course of their marketing, flowed in interstate channels or were physically and inextricably commingled with such interstate commodities, as in the case of *Mulford* v. *Smith*, 307 U. S. 38.

(1) THE QUESTIONS PRESENTED IN THE ROCK ROYAL CASE.

The determination of this Court in the *Rock Royal* case on the interstate commerce question did not require the adoption of any broader conception of Federal power than was exemplified in the earlier decisions and, we suggest, this Court had no intention of foreclosing inquiry into the question of the extent of such power over wholly intrastate activities, *as applied to goods whose marketing is completely dissociated from interstate commerce.* The limitations on the Federal power, suggested in the *Schechter* case, 295 U. S. 495, would appear to have some applicability to such issue.

The Circuit Court of Appeals, apparently feeling bound by the broad language in the majority opinion in the *Rock Royal* case, ventured to suggest that petitioner's real hope is "to induce the Supreme Court to limit the *Rock Royal* decision" (107 Fed. 2nd, 987). It is to be noted that it was not suggested that petitioner's contention requires any limitation on the decisions cited in the *Rock Royal* case.

(2) THE CASES CITED IN THE ROCK ROYAL CASE.

In the *Labor Board Cases,* 301 U. S. 1, the defendants were engaged in manufacturing, and the controversies with their employees involved activities wholly within the State. But the Court sustained the power to regulate such activities because the raw materials came to the defendants through interstate channels and the finished products were, in large part, marketed in other states. The Court, accordingly, held that there was a *direct* effect upon interstate commerce and hence that the manufacturing came within the scope of the Commerce Clause.

National Labor Relations Board v. *Fainblatt,* 306 U. S. 601, was held to come within the same principle. In that case the defendant's business differed from that of the defendants in the earlier cases, in that Fainblatt was

engaged in a purely local enterprise of making up garments, under contract, out of raw materials belonging to others. He sold no merchandise in interstate commerce or otherwise. But, the Court pointed out, the materials with which he made up the garments were shipped to him through channels of interstate commerce and the garments manufactured by him were similarly shipped back through the same channels and were ultimately sold in interstate commerce. The Court held that the matter of legal title to the raw materials or finished products was immaterial and that the determination in the earlier *Labor Relations Board* cases was controlling.

In *Mulford* v. *Smith,* 307 U. S. 38, the question was with respect to the constitutionality of Title III of the Agricultural Adjustment Act of 1938 insofar as it established marketing quotas for flue-cured tobacco. The restrictions were not upon production, but there were quota restrictions with respect to the quantity which each producer might market through a warehouseman. The marketing warehouse was, the Court said, "the throat where tobacco enters the stream of commerce". The Court pointed out that such tobacco is sold at public auction in those warehouses, commingled with tobacco of other producers. The opinion reads:

> "The record discloses that at least two-thirds of all flue-cured tobacco sold at auction warehouses is sold for immediate shipment to an interstate or foreign destination. In Georgia, nearly one hundred per cent. of the tobacco so sold is purchased by extrastate purchasers. In markets where tobacco is sold to both interstate and intrastate purchasers it is not known, when the grower places his tobacco on the warehouse floor for sale, whether it is destined for interstate or intrastate commerce. Regulation to be effective, must, and therefore may constitutionally, apply to all sales."

The distinction between the foregoing cases and the instant case is readily apparent. While, in each instance, the subject matter of the regulation was, at the moment, wholly within the boundaries of a single state, the products produced by the respective defendants were actually destined for ultimate disposition in interstate commerce.

The earlier case of *Stafford* v. *Wallace*, 258 U. S. 495, cited by the Court, clearly shows the same distinction. That was a suit to enjoin enforcement of the Packers and Stockyards Act of 1921 insofar as it provided for supervision and control of stockyard facilities. The appellants claimed that their business was wholly intrastate in character; that the services rendered by them were purely local, even though the livestock may have been transported or was about to be transported in interstate commerce. Chief Justice Taft, writing the opinion of the Court, after pointing out how exorbitant rates and deceptive practices obstructed interstate commerce, said (p. 516):

> "The stockyards are but a throat through which the current flows, and the transactions which occur therein are only incident to this current from the West to the East, and from one state to another. Such transactions cannot be separated from the movement to which they contribute, and necessarily take on its character."

Chicago Board of Trade v. *Olsen*, 262 U. S. 1, cited in the opinion, was decided on the authority of *Stafford* v. *Wallace*, supra. It involved the constitutionality of the Grain Futures Act of 1922 which placed under Federal control the operation of the boards of trade at which transactions in grain for future delivery in interstate commerce were conducted. It appeared that it was the practice to ship grain to Chicago in interstate commerce with the right of temporary stoppage for storage, inspection, weighing and grading, with privilege of shipping under

a through rate to the Eastern seaboard after sale on the Board of Trade.

Chief Justice Taft stated the problem as follows (p. 36):

> "The question is whether the conduct of such sales is subject to constantly recurring abuses which are a burden and obstruction to interstate commerce in grain. And further, are they such an incident of that commerce, and so intermingled with it, that the burden and obstruction caused therein by them can be said to be direct?"

The Court answered both questions in the affirmative, to the extent at least of saying, as it did in *Stafford* v. *Wallace,* that Congress, having found that the appellant's activities did directly affect interstate commerce, the Court would not substitute its own judgment for that of Congress.

It is to be noted that in the present suit there is no finding of Congress or of the Secretary of Agriculture that wholly intrastate handling does *directly* affect interstate commerce. The order involved in this suit appears to contemplate separate State control over intrastate handling.

The case of *Houston & Texas Railway* v. *United States,* 234 U. S. 342, cited in the *Rock Royal* case, involved the power of the Interstate Commerce Commission to prevent discrimination against interstate shipments by requiring either the increase of intrastate rates to a parity with interstate rates for a haul of the same length, or a proportionate reduction of interstate rates regardless of the reasonableness of the existing interstate rates. Facilities were used in common for both interstate and intrastate shipments. Mr. Justice (now Chief Justice) Hughes said (p. 354):

> "The use of the instrument of interstate commerce in a discriminatory manner so as to inflict injury

> upon that commerce, or some part thereof, furnishes abundant ground for Federal intervention."

The distinction, in principle, is obvious.

In the *Minnesota Rate* cases, 230 U. S. 352, cited by Mr. Justice Reed, the Court said (p. 399):

> "The authority of Congress extends to every part of interstate commerce, and to every instrumentality or agency by which it is carried on; and the full control by Congress of the subjects committed to its regulation is not to be denied or thwarted by the commingling of interstate and intrastate operations. This is not to say that the nation may deal with the internal concerns of the state, as such, but that the execution by Congress of its constitutional power to regulate interstate commerce is not limited by the fact that intrastate transactions may have become so interwoven therewith that the effective government of the former incidentally controls the latter."

Currin v. *Wallace*, 306 U. S. 1, cited by Mr. Justice Reed, involved the authority of the Federal Government to require the inspection and grading of tobacco in warehouses where the same was stored prior to sale and interstate shipment. The sole question was whether Federal control was prevented by the fact that some of the tobacco, so stored, was intended for local use. The Court pointed out that with the exception of a small quantity used locally, all sales were for interstate shipment and stated that it was well settled that sales for shipment to other states were as much part of interstate commerce as the actual transportation. Mr. Chief Justice Hughes said (p. 11):

> "The fact that intrastate and interstate transactions are commingled on the tobacco market does not frustrate or restrict the congressional power to protect and control what is committed to its own care * * *"

The Government can take little comfort from the language of any of the cases cited in Mr. Justice Reed's opinion. In every case the subject matter of the regulation was a product which had been handled through the channels of interstate commerce, or was destined for immediate transportation in interstate commerce, or had used facilities common to interstate and intrastate commerce.

The present case contains no such element. We urge that the *Rock Royal* case does not support the contention that *all* milk of *all* handlers, however remote from interstate aspects its handling may be, may lawfully be brought within the Federal domain.

Petitioner urges that while the determination of the Circuit Court of Appeals might conform to the broad language of the prevailing opinion in the *Rock Royal* case, it is in conflict with the principles underlying the applicable decisions of this Court as exemplified in the cases cited and in such decisions as the *Schechter* case, supra.

If the existence of competition between interstate and intrastate goods will alone and of itself permit the Federal Government to invoke the Commerce Clause to justify regulation of intrastate handling of intrastate goods, a new and practically unlimited source of Federal power will be tapped. Such construction of the Commerce Clause would permit the Government to regulate the production and sale of practically every commodity, for there are few local commodities, and few local services, which do not enter the market in competition with similar products and similar services having interstate aspects. The construction contended for by the Government would place within Federal control, and exclude from State regulation, practically every phase of local production and industry.

In the *Labor Board Cases,* 301 U. S. 1, the scope of Federal power was limited as follows (p. 37):

"Undoubtedly the scope of this power must be

> considered in the light of our dual system of government and may not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them, in view of our complex society, would effectually obliterate the distinction between what is national and what is local and create a completely centralized government."

We urge upon this Court the proposition that where, as in the case of the petitioner, its product is produced wholly within the State, is handled, sold and consumed wholly within the State, and during no part of its existence is it physically intermingled with similar milk handled in interstate commerce, but continues throughout to retain its own identity, it cannot lawfully be subject to Federal control under the Commerce Clause.

(B) The Construction of the Order.

The *Rock Royal* case involved only the validity of the statute and of the order issued under it. The construction of the Order insofar as it purported to embrace the defendants' activities was not questioned.

The fact that the Order was intended to be part of a joint and concurrent regulation of the marketing of milk in the New York City area would seem to demonstrate that, whatever the power of the Secretary of Agriculture, there was no intent to exercise that power to the complete exclusion of the State of New York from participation in the marketing plan. Yet the Government's contention operates to effectuate such complete exclusion and to make the concurrent and complementary order a mere hollow gesture of authority.

If open market competition causes petitioner's milk to be deemed to be "physically and inextricably intermingled" with interstate milk (Order No. 27, p. 2) then there is no

milk which escapes Federal control. If petitioner's milk is embraced within the purview of the Federal Order, all milk sold in New York City is similarly embraced therein, for it is undisputed that all milk sold in the market is sold on a competitive basis.

Yet the whole structure of the Federal Order is built upon a foundation of concurrent State and Federal control. Petitioner urges that the contention of the Government does violence to the obvious purpose and intent of the Order.

POINT II.

Market conditions prevailing during November and December, 1938, and January, 1939, made the enforcement of the Federal order confiscatory, in violation of the due process clause of the Fifth Amendment.

The minimum price fixed by the Order for Class I (fluid) milk was $2.45 per hundredweight (record, fol. 47). The parties agree that such price can be paid to producers only if the milk can be resold in the wholesale market at 9¾¢ per quart or more. (The Government's statement to that effect is found in the affidavit of Mr. Reed at folio 47. The defendant's statement is found at folios 123-125.) The prevailing wholesale milk price of Class I milk during the period of defendant's non-compliance was as low as 8¢ per quart (fol. 127) on a steadily declining scale. While the 9¾¢ price prevailed, petitioner fully complied. It had long since given way to competitive conditions (fol. 126).

There seems to be no dispute as to the cause of the collapse. Certain handlers (not including the defendant) took the position that the Order was void and unenforceable for the various reasons advanced in the *Rock Royal*

case. Those persons sold their milk in the open market at prices below those which would have prevailed had they been required to comply with the Order and pay their pool obligations. Defendant was at that time in full compliance with the Order. It continued to pay into the pool, at great loss to itself, a total of $44,527.48 (fol. 127). The Government, recognizing the impossibility of maintaining the price structure under such conditions, sought to procure summary enforcement against the non-complying handlers. In its application for a preliminary injunction, the Government stated to the District Court in the *Rock Royal* case

> "it will be impossible for handlers to comply with the order and at the same time meet the competition of the defendants who are violating the order" (fol. 128).

The petitioner, in its own small way, sought to assist the Government in its efforts to procure such enforcement by submitting an affidavit at the Government's request, pointing out with particularity how the price cutting of the non-complying handlers had demoralized the market and forced other handlers to meet the reduced wholesale price (record, fol. 130). When the District Court declined to grant the Government's motion for a preliminary injunction, the stamp of judicial approval was put upon the position of the non-complying handlers.

Mr. Reed, of the Department of Agriculture, summarized the situation in his affidavit in this suit, in which he said (fol. 50):

> "Other handlers were forced to meet these prices in order to retain their business and the general level of prices dropped to disastrously low levels.
>
> The failure of summary enforcement against the defendants together with the resulting disorderly marketing conditions made effective enforcement against other handlers impossible."

Petitioner was among those "other handlers". It had no choice but to sell its milk in the market as it existed. The Government has not suggested that petitioner was responsible for those conditions or contributed to them. The volume of milk handled by petitioner was less than 2% of the total volume sold in the market (fol. 145). The Circuit Court of Appeals recognized petitioner's position and pointed out that three courses were open to it—which the Court characterized as "a hard choice": (1) to conduct its business in compliance with the Order; (2) to cease doing business or (3) to keep on without compliance and run the risk of the consequences.

The latter choice is scarcely within the pale of lawful conduct. The validity of the Order must be tested by the first two alone.

To comply with the Order would have been to court bankruptcy. No handler could pay $2.45 per hundredweight and still sell fluid milk at 8¢. Yet no higher price was available. The period of survival of any handler would be measured by the extent of such handler's resources. Ultimately the entire industry must go bankrupt if such choice were followed. The order was suspended as of January 31st, 1939 for the simple reason that virtually every handler who had a pool obligation under the Order had to take the outlaw position of refusing to comply (fols. 51, 157 to 162).

The only lawful alternative, therefore, was to cease doing business.

That brings us to the vital question: can such an order lawfully be enforced when such enforcement means virtual destruction of an entire industry? The Government recognized that such disaster was imminent when it suspended the operation of the Order as of January 31st, 1939. Logically, since the Government insisted that the Order was valid, there was no reason for such suspension pending the appeal to this Court in the *Rock Royal* case any more

than there is reason to repeal a law pending test of its constitutionality. If the interests of producers required the minimum prices, those interests should not have been sacrificed pending the appeal. Obviously, the Order was suspended in recognition of the confiscatory nature of enforcement under prevailing conditions. Those same conditions, however, existed prior to January 31st, 1939.

The determination of the Circuit Court of Appeals was based upon its construction of this Court's decision in the case of *Hegeman Farms Corp.* v. *Baldwin,* 293 U. S. 163. That case, however, by implication, at least, supports, rather than discredits, our argument.

That case dealt with the New York Milk Control Law (since repealed) which set up fixed minimum prices for every phase of milk marketing, including prices on sales from producers to dealers, on sales from dealers to retail stores, and on sales from retail stores to consumers. The sole question was whether the difference between the fixed minimum prices at which plaintiff was compelled to purchase its milk from producers and the fixed prices at which it could resell it, viz., the "spread", was so inadequate and arbitrary and unreasonable as to be confiscatory. This "spread" the defendant charged was

> "insufficient in amount to afford plaintiff a fair return on the present fair value of the properties devoted by it to its milk business, less depreciation."

Mr. Justice Cardozo, commenting on this claim, said (p. 169):

> "They do not tell us whether the appellant ran its business with reasonable efficiency when compared with others in its calling * * * For all that appears upon this record, a change in the minimum prices would avail the appellant nothing if a corresponding increase or reduction were allowed to its

> competitors. It might still be driven to the wall without the aid of a differential that would neutralize inequalities of capacity or power."

Summarizing the plaintiff's claim, Mr. Justice Cardozo further said (p. 170):

> "The appellant's grievance amounts to this, that it is operating at a loss, though other dealers more efficient or economical or better known to the public may be operating at a profit."

Rejecting this contention, the Court said (p. 170):

> "True the appellant is losing money under the orders now in force. For anything shown in the bill it was losing money before. For anything there shown other dealers at the same prices may now be earning profits; at all events they are content, or they would be led by self-interest to raise the present level * * * The appellant would have us say that minimum prices must be changed whenever a particular dealer can show that the effect of the schedule in its application to him is to deprive him of a profit. This is not enough to subject administrative rulings to revision by the courts."

The record in the instant case completely negatives any suggestion that petitioner's position is the result of lack of efficiency, or any other factor which caused petitioner to lag in the competitive race for business to the advantage of a "more efficient or economical" competitor. On the contrary, the record shows that petitioner operates its business with greater efficiency and at less cost than the average handling cost of the largest and most efficient handlers. The details, based upon current Government reports, are shown on page 50 of the record. We take these statements, supported by our own detailed proof, to establish the complete distinction between the facts in this case and those in the *Hegeman Farms* case.

No similar question was raised in the *Rock Royal* case. The Government in its brief in that case pointed out (p. 91):

> "They have not established that the operation of the order has made their business unprofitable or that they operate with reasonable efficiency. There is no evidence that the prices of milk in the sections of the marketing area in which they sell milk are lower than the delivered cost of milk."

Moreover, the defendants in the *Rock Royal* case could scarcely have been heard to complain about market conditions which they themselves created.

Whatever the situation might have been under conditions prevailing in September and October, 1938, there can be no question as to the effect of the Order under conditions prevailing in November and December, 1938, and January, 1939. The price prescribed by Order No. 27 might have been fair and reasonable during the earlier period and might have been wholly confiscatory during the latter period.

As Mr. Justice Roberts said in *Nebbia* v. *New York*, 291 U. S. 502, 525:

> "It results that a regulation valid for one sort of business, *or in given circumstances,* may be invalid for another sort, *or for the same business under other circumstances,* because the reasonableness of each regulation depends upon the relevant facts." (Italics ours.)

May it not be overlooked that the prices for fluid milk fixed by the Order are not in any sense based upon cost of production. It cannot be argued that market prices are irrelevant. The prices fixed by the Order are keyed to the wholesale butter market in New York (see Order No. 27, Article IV, Section 1, Paragraph 1). Presumably some

constant relationship should exist between the wholesale butter price and the wholesale milk price; otherwise there would be no tenable ground for fixing the milk price on a butter basis.

It is to be noted that other classifications of milk under the Order are similarly based upon wholesale prices of related commodities as, for example, the Class III-A price is based upon the wholesale price of evaporated milk; the Class IV-B price upon the cheese market and the like.

Clearly, then, the enforcement of minimum producer prices for fluid milk, when the prescribed price falls out of line with the wholesale market for such product, does violence to the purpose and aim of the Act and of the Order.

As we have demonstrated, the petitioner had no choice but to sell its milk at prevailing prices. It paid its producers on the basis of such prices. To require petitioner, at this time, to meet the claim of the Government would be confiscation in a most aggravated form.

Conclusion.

It is respectfully urged upon this Court that the petition for a writ of certiorari to the Circuit Court of Appeals for the Second Circuit should be granted.

Respectfully submitted,

SAMUEL RUBIN,
Attorney for Petitioner.